

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

MUHAMMAD NAWAZ---Petitioner

Versus

The STATE and others---Respondents

Crl. P. 1050-L of 2020, decided on 26th July, 2021.

(Against the order dated 16.09.2020 passed by the Lahore High Court, Lahore in Crl. Misc. No.39205-B/2020)

Criminal Procedure Code (V of 1898)---

---Ss. 497 & 498---Constitution of Pakistan, Art. 185(3)---Bail---Jurisdiction of the Supreme Court and High Courts---Difference between the appellate jurisdiction of the Supreme Court under Art. 185(3) of the Constitution in bail matters and the original jurisdiction of the High Court under S.498, Cr.P.C. to grant bail highlighted.

Section 498, Cr.P.C. conferred original and concurrent jurisdiction on the High Court and Court of Session to grant bail, by stating that "the High Court or Court of Session may in any case direct that any person be admitted to bail". That was why when a trial court, for instance, a Court of Magistrate, declined to grant post arrest bail under section 497, Cr.P.C. to a person accused of having committed a non-bailable offence, the accused filed a fresh petition under section 498, Cr.P.C. in the Court of Session and, in case of failure to obtain the relief once again approached the High Court. The Court of Session and the High Court had original jurisdiction to grant bail and they made their own independent orders on the said petitions without commenting upon and setting aside the order of the trial court. The power of the High Court and the Court of Session, under section 498, Cr.P.C., to grant post arrest bail was thus co-extensive and concurrent with that of the trial court under section 497 Cr.P.C., while the power to grant pre-arrest bail under the said section was exclusive to them.

Muhammad Ayoob v. Muhammad Yakoob PLD 1966 SC 1003 ref.

The appellate jurisdiction of the Supreme Court, under Article 185(3) of the Constitution, in bail matters was quite distinct from the original jurisdiction of the High Court and Court of Session under section 498, Cr.P.C. The essential criterion of appellate jurisdiction was that it examined and if required corrected the errors, if any, of a lower forum. That being the nature of appellate jurisdiction, the Supreme Court examined the legality of the orders passed by the High Court in bail matters and corrected those orders in appellate jurisdiction under Article 185(3) of the Constitution only when it found that the High Court had exercised the discretion in granting or declining bail arbitrarily, perversely or contrary to the settled principles of law, regulating bail matters.

Haq Nawaz v. State 1969 SCMR 174 and Zaro v. State 1974 SCMR 11 ref.

Ms. Tasnim Ameen, Advocate-on-Record for Petitioner along with Petitioner.

Khurram Khan, Addl. P.G. along with Akmal, S.I. for the State.

Date of hearing: 26th Junly, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---This is a petition seeking leave to appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"), against order dated 16.09.2020 passed by the High Court whereby pre-arrest bail petition filed by the petitioner, under sections 497/498 of the Code of Criminal Procedure, 1898 ("Cr.P.C."), has been dismissed as withdrawn with the following observation:

"After arguing this case at full length, learned counsel for petitioner opts to withdraw this petition, which stands dismissed as such."

The High Court has dismissed the bail petition of the petitioner on the very statement of the learned counsel for petitioner, opting to withdraw the same. In the present petition no legal error has been pointed out in the said order of the High Court; it has simply been averred in the petition that the petitioner is entitled to

pre-arrest bail in the facts and circumstances of the case, and he may be admitted to bail. Same grounds, as agitated before the High Court, have been reiterated. In this backdrop, the learned counsel for the petitioner (Advocate-on-Record) at the very outset requested to withdraw the titled petition.

2. We have noted in our course of hearings that several petitions filed for leave to appeal against the orders of the High Court dismissing post or pre arrest bail petitions are argued as if they are fresh petitions for bail before this Court. Some learned counsel often plead the case for grant of bail, without identifying the legal error purportedly committed by the High Court in exercise of its discretion by declining the relief of bail. This present petition is a classic example of such misconception, wherein after full arguments the bail petition was withdrawn before the High Court yet relief of bail has been prayed for by the petitioner as if this Court has jurisdiction concurrent with the courts below to entertain bail petitions. We think it proper to clear the said confusion and clarify the difference between the appellate jurisdiction of this Court under Article 185(3) of the Constitution in bail matters and the original jurisdiction of the High Court to grant bail under section 498, Cr.P.C.

3. Section 498, Cr.P.C. confers original and concurrent jurisdiction on the High Court and Court of Session to grant bail, by stating that "the High Court or Court of Session may in any case ... direct that any person be admitted to bail". That is why when a trial court, for instance, a Court of Magistrate, declines to grant post arrest bail under section 497, Cr.P.C. to a person accused of having committed a non-bailable offence, the accused files a fresh petition under section 498, Cr.P.C. in the Court of Session and, in case of failure to obtain the relief once again approaches the High Court. The Court of Session and the High Court have original jurisdiction to grant bail and they make their own independent orders on the said petitions without commenting upon and setting aside the order of the trial court. The power of the High Court and the Court of Session, under section 498, Cr.P.C., to grant post arrest bail is thus co-extensive and concurrent with that of the trial court under section 497, Cr.P.C., while the power to grant pre-arrest bail under the said Section is exclusive to them.¹

4. The appellate jurisdiction of this Court, under Article 185(3), in bail matters is quite distinct from the original jurisdiction of the High Court and Court of Session under section 498, Cr.P.C. The essential criterion of appellate jurisdiction is that it examines and if required corrects the errors, if any, of a lower forum. That being the nature of appellate jurisdiction, this Court examines the legality of the orders passed by the High Court in bail matters and corrects those orders in appellate jurisdiction under Article 185 (3) of the Constitution only when it finds that the High Court has exercised the discretion in granting or declining bail arbitrarily, perversely or contrary to the settled principles of law, regulating bail matters.²

5. In the present case, the bail petition filed in the High Court was withdrawn by the petitioner himself and the High Court accordingly dismissed the same as withdrawn. The grounds agitated in the petition do not point out any legal error in the order of the High Court and gives no justification for filing of the present petition, which is therefore utterly misconceived. Though the learned counsel for the petitioner (Advocate-on-Record) has requested to withdraw the present petition, we are of the view that the filing of such a vexatious petition has wasted the precious public time of the Court. Therefore, while allowing the petitioner to withdraw the present petition we dismiss the same as withdrawn, and also impose costs of Rs. 10,000/- on the petitioner, under Rule 3 of Order XXVIII of the Supreme Court Rules, 1980 ("Rules"). The said costs shall be deposited by the petitioner with any recognized charitable organization and receipt thereof be submitted with the office of the Deputy Registrar at Lahore Branch Registry of this Court, within 15 days from today. In case of failure by the petitioner to deposit the said costs, the Advocate-on-Record for the petitioner, shall be personally liable to deposit the said costs in terms of Rule 25 of Order IV of the Rules.

MWA/M-46/SC Petition dismissed.